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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/667,284	09/22/2000	Thomas D. Dickson JR.	8132	1192

7590

08/13/2004

L Grant Foster
HOLLAND & HART LLP
555- 17TH sTREET, SUITE 3200
P.O. Box 8749
Denver, CO 80201

EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

✓ 18

Office Action Summary	Application No. 09/667,284	Applicant(s) DICKSON ET AL.	
	Examiner Drew E Becker	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 41 and 42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 41 and 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Request for Continued Examination

1. The request filed on July 19, 2004 for an RCE based on parent Application No. 09/677,284 is acceptable and an RCE has been established. An action on the RCE follows.

Response to Amendment

2. The affidavit filed on June 29, 2004 under 37 CFR 1.131 is sufficient to overcome the Frank et al [Pat. No. 6,536,224] reference.
3. The affidavit under 37 CFR 1.132 filed June 29, 2004 is insufficient to overcome the rejection of claims 1-12 and 41-42 based upon Reese et al and Farrell as set forth in the last Office action because: "refrigeration" has not been assigned a specific definition in the specification and therefore is given its broadest reasonable interpretation and due to the new grounds of rejection.
4. In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-12 and 41-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claims 1, 3, 7-8, 11, and 41-42 recite "A blending station apparatus, comprising:... a blending device mounted to the blending station apparatus." It is not clear whether the "blending device" is part of the claimed apparatus, or merely a separate apparatus.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 7 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Reese et al [Pat. No. 5,960,701].

Reese et al teach a blending apparatus comprising a container at a blending location (Figure 1, #13), liquid supply lines (Figure 10B, #41), a blending device (Figure 1, #12), an ice supply which acts as a refrigeration system (Figure 2, #19), and a single, self-contained, stand-alone preparation and processing station to contain it all (Figure 1).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-2, 4-6, 9-12, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reese et al as applied above, in view of Farrell [Pat. No. 6,326,047]. Reese et al teach the above mentioned concepts. Reese et al also teach a control panel with a microprocessor (Figure 1, #54). Reese et al do not recite a peristaltic pump or six food supply lines. Farrell teaches a blending device comprising a peristaltic pump (Figure 5, #26). It would have been obvious to one of ordinary skill in the art to incorporate the peristaltic pump of Farrell into the invention of Reese et al since both are directed to blending devices, since Reese et al already included liquid supply sources (Figure 1, #20), since Reese et al required a means to provide precise portion control of the beverage or drink mix, since peristaltic pumps were a commonly known means to provide a metered supply of liquid as shown by Farrell, and since pumps were not dependent upon gravity, thereby permitting the location of the fluid tanks to another location, for instance below or beside the blending container, to provide more operating space in the kitchen or workplace. It would have been obvious to one of ordinary skill in the art to provide six supply lines with the invention of Reese et al since Reese et al already illustrated four supply lines (Figure 1), since Reese et al teach using "any reasonable number of receptacles" (column 5, lines 6-10), and since six would certainly

be considered a reasonable number in the art of blending devices. Phrases such as "wherein the foodstuffs comprise..." are merely preferred methods of using the claimed apparatus.

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reese et al as applied above, in view of Frank et al [Pat. No. 5,706,661].

Reese et al teach the above mentioned components. Reese et al do not recite a water supply. Frank et al teach a blending apparatus comprising a water supply (Figure 1, #24). It would have been obvious to one of ordinary skill in the art to include the water supply of Frank et al into the invention of Reese et al since both are directed to blending devices, since Reese et al already included liquid supply sources (Figure 1, #20) and taught the use of other liquids (column 5, line 60), since a water supply was commonly included in blending devices as shown by Frank et al (Figure 7, #21), and since the diversity of beverages which could be made by the device of Reese et al would be expanded due to the fact that many beverage mixtures commonly required water as an ingredient.

13. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reese et al as applied above, in view of Maddux [Pat. No. 6,173,458].

Reese et al teach the above mentioned components as well as cleaning and a sink (column 4, lines 57-63). Reese et al do not recite a cleaning location with a cleaning liquid supply line. Maddux teaches a self-contained beverage device (column 1, lines 6-14) comprising a sink with a liquid soap dispenser and water line (Figure 1, #14, 50, 52). It would have been obvious to one of ordinary skill in the art to incorporate the sink and

spigot of Maddux into the invention of Reese et al in since both are directed to food and beverage dispensing devices, since Reese et al already included cleaning and sinks (column 4, lines 57-63), since blender containers were commonly washed in sinks, and since microorganisms could grow on a blending container which has not been cleaned and thus create a risk of food borne illness.

Response to Arguments

14. Applicant's arguments with respect to claims 1-12 and 41-42 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that the ice of Reese et al does not qualify as a refrigeration system. However, early refrigerators (or ice boxes) commonly used ice as the coolant in much the same manner as Reese et al. It is noted that the features upon which applicant relies (i.e., mechanical refrigeration) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The term "refrigeration" has not been assigned a specific definition by applicant's specification, and therefore will be given its broadest reasonable interpretation.

Applicant argues that Reese et al does not teach a liquid supply line. However, regardless of the terminology used, component #41 of Reese et al clearly functions as a liquid supply line by transferring the liquid from the supply tank to the beverage container.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).


In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Reese et al is directed to a beverage mixing and dispensing device, Farrell is directed to a beverage mixing device, Frank is directed to a beverage mixing device, and Maddux is directed to a food and beverage device.

Applicant argues that the term "automatic" is defined as only: an absence of human intervention. However, applicant's specification does not provide a particular definition for "automatic" and it therefore must be given its broadest reasonable interpretation. In this case, water flowing from a spigot onto the beverage container would "automatically" remove food materials.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Drew E Becker
Primary Examiner
Art Unit 1761
